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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1849**

Thies and Talle Management, Inc.,
Appellant,

vs.

Nasra Moalin,
Respondent.

**Filed August 19, 2008
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-HG-CV-07-303

Jeffrey J. Fenske, Ritter & Fenske, Ltd., 461 University Avenue, St. Paul, MN 55103 (for appellant)

Gerald G. Kaluzny, Colleen Walbran, Southern Minnesota Regional Legal Services, Inc., 166 East Fourth Street, Suite 200, St. Paul, MN 55101 (for respondent)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Muehlberg, Judge.*

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the district court's decision dismissing its unlawful detainer action after a bench trial. Appellant argues that the district court clearly erred when it

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

found that appellant had failed to prove by a preponderance of the evidence that respondent materially violated the terms of her lease. Because the district court's findings are not manifestly contrary to the weight of the evidence, we affirm.

FACTS

Appellant Thies and Talle Management, Inc., manage the Afton View Apartments located at 2180 Londin Lane in St. Paul. Appellant leased a unit in this apartment complex to respondent Nasra Moalin on January 18, 2006. The lease contained a number of restrictions, including restrictions against destroying property on the leased premises, engaging in acts of violence or threats of violence on or near the leased premises, and engaging in acts of bodily harm or attempts to inflict bodily harm. The lease provided that noncompliance with its terms could lead to a termination of the lease.

On May 20, 2007, respondent had attended a party in Minneapolis celebrating Somali Independence Day. She arrived around midnight. While at the party, respondent encountered Aniza Nur, another Afton View resident. For reasons that are unclear, the two became involved in an altercation that attracted the participation and involvement of others at the party. The police were called in to break up the fight, and respondent testified that she left the party around 2:00 a.m., went to stay at her cousin's house, and had no further contact with Nur.

Nur's testimony conflicted with respondent's testimony regarding what happened following the party. Nur testified that respondent followed her home from the party in Minneapolis to the apartment complex. On the way back to her apartment, Nur claimed that respondent, while on the freeway, "was hitting bumper to bumper" and calling Nur

on her cell phone to tell her “Get off the freeway. I’ll show you who you are.” Nur testified that respondent called her and her friend, who was also in the car, three times as she followed them the entire way back to the apartment complex. Nur testified that upon entering the apartment complex’s parking lot and coming to a stop at a stop sign in the parking lot, six people exited respondent’s car and assaulted her. Nur also testified that after the assault occurred, another car arrived in the parking lot. She testified that the occupants of this car were responsible for breaking the windows in her apartment. Nur stated that respondent was also one of the occupants of this car and was involved in throwing rocks through her window. Respondent denied participation in the incidents on the freeway and at the stop sign in the parking lot.

The next morning, May 21, 2007, Nur filed her complaint with Abdullahi Anshoor, appellant’s residential manager. Anshoor sent a notice of lease termination to respondent the following day. An eviction summons was filed on June 22, 2007, and a two-day bench trial was held before a housing court referee on August 14, 2007 and August 27, 2007. On September 14, 2007, the housing referee dismissed appellant’s complaint, concluding that appellant did not carry its burden of establishing that material terms of the lease had been broken. The district court affirmed that decision and issued the findings of fact, conclusions of law, and corresponding judgment that are at issue in this case. This appeal follows.

DECISION

Minn. R. Civ. P. 52.01 provides:

Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court.

It is not the province of this court “to reconcile conflicting evidence.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). In applying Minn. R. Civ. P. 52.01, this court views “the record in the light most favorable to the judgment of the district court.” *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). This court will not reverse the district court’s judgment merely because it views the evidence differently. *Id.*; see also *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000) (“[t]hat the record might support findings other than those made by the [district] court does not show that the . . . findings are defective.”). Rather, the district court’s factual findings must be clearly erroneous or “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole” to warrant reversal. *Rogers*, 603 N.W.2d at 656 (quotation omitted). “Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Fletcher*, 589 N.W.2d at 101 (quotation omitted). But “[i]f there is reasonable evidence to support the district court’s findings, we will not disturb them.” *Rogers*, 603 N.W.2d at 656.

In this case, respondent testified that she did not breach her lease, and the district court found this testimony credible, stating:

The burden is on [appellant] to prove by a preponderance of the evidence that [respondent] materially breached the terms of the lease.

[Appellant] failed to prove by a preponderance of the evidence that [respondent] materially violated the lease.

[Respondent] provided credible testimony that she did not breach the lease and her testimony is corroborated by the T-Mobile telephone records.

(emphasis added).

Appellant argues that the district court's findings of fact are clearly erroneous and that, as a result, it carried its burden in establishing that respondent materially violated the terms of her lease. Essentially, appellant is asking this court to second guess the district court's credibility determinations. We decline to do so. *See State v. Johnson*, 568 N.W.2d 426, 435 (Minn. 1997) (holding that it is well-settled that judging the credibility of witnesses and the weight given to their testimony rests within the province of the finder of fact).

Much of Nur's testimony is inconsistent at best. She testified that she was beaten on two occasions: once at the party in Minneapolis by a group of 14 people, and again at the apartment complex's parking lot by a group of six people who exited from the same car. This testimony was contradicted by the testimony of her own sister who testified that there were only six individuals involved during the incident at the party. At the second incident, Nur testified that she was hit in the back with "something like a pipe." Yet, in

response to these attacks, Nur stated she only took some medication for a headache. Nur also testified that respondent made three threatening phone calls to her and her friend during the drive from the party to the apartment complex. Respondent denied this and her testimony was corroborated by her cellular phone records which established that she did not make any calls on her own phone to Nur during the time that Nur claimed respondent did. Nur and her friend declined to produce her cell phone records, which would have potentially corroborated her testimony by establishing that she actually received incoming calls during this time period.

Appellant points to the video surveillance footage as evidence that the district court's findings are clearly erroneous, but it is undisputed that the footage did not show the faces of those throwing the rocks through Nur's apartment windows. As such, the footage cannot be said to establish a firm conviction that a mistake has been made by the district court because it in no way identifies respondent as someone who was throwing rocks through Nur's windows.

Regarding the incident on the freeway, respondent contacted the police after she found the police wanted to question her, the police summarily examined her car, and she was not charged with any crime. Presumably, if there had been an indication of bumper-to-bumper contact, the police would have pursued a further investigation against respondent.

When viewed in the light most favorable to the findings, the evidence in the record does not establish a definite and firm conviction that a mistake was made by the district court. The district court's credibility determinations were not made in a vacuum in this

case; there was evidence corroborating respondent's testimony, there were significant holes in the testimony of Nur, and there was no independent corroborating evidence supporting appellant's version of events.

Affirmed.